

Q&A With Carlton Fields' Steven Brodie

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Steven J. Brodie

Law360, New York (May 13, 2013, 12:40 PM ET) - Steven Brodie, a shareholder with Carlton Fields, is a commercial litigator in state and federal courts. Brodie has experience in insurance-related litigation, including coverage, defense and regulatory matters, as well as securities, complex business litigation and creditors' rights.

He also represents insurance companies, telecommunications companies, institutional lenders and developers. In addition to litigation, Brodie provides professional business guidance and lobbying services. This representation includes the procurement of government contracts and other business opportunities in the public and private sectors.

Q: What is the most challenging case you have worked on and what made it challenging?

A: It was a bad faith case in which the insurer was being sued over \$50 million. Our client was an excess carrier that did not control the defense of the underlying claim. In our opinion, the insurer met all of its obligations to its insured by timely investigating the underlying claim and appropriately responding to settlement demands. A significant judgment was entered against the insured. The underlying plaintiff settled with the primary carrier and several other parties and then took an assignment to proceed against the excess carrier for bad faith.

Liability was the only issue involved with respect to the bad faith case as damages were already determined. There were novel issues of law. There were major discovery disputes regarding the discoverability of underlying settlement negotiations. In our view, the law and facts supported the carrier, however, there was sympathy for the underlying plaintiff, a young woman who suffered brain damage. To have the law and facts in your favor but the sympathy for the other side with significant dollars at issue made this case extremely challenging.

Q: What aspects of your practice area are in need of reform and why?

A: The area of bad faith needs to be reformed. When there is limited insurance coverage for a loss or accident, plaintiffs' counsels are creatively looking for ways to set up the insurance carriers for bad faith.

There are thousands of civil remedy notices of insurer violations filed every year in Florida. At times, there are real legitimate coverage issues and while an insured may prevail and seek attorneys' fees it should not be entitled to extra-contractual damages. This type of exposure will drive up the cost of insurance for all Floridians. Furthermore, some carriers may be unwilling to write certain lines of business in Florida because of the bad faith law.

Q: What is an important issue or case relevant to your practice area and why?

A: An important issue is having courts apply the plain meaning of insurance policies. Quite often, insured counsel claim that a policy term can be construed in several ways, and this is ambiguous and must be construed in favor of coverage.

It is difficult for insurance companies to define every critical word in a policy. There have been several recent decisions our insurance practice group obtained, whereby courts have refused to fall into this trap and have applied the clear meaning of the policy — decisions like: *Office Depot v. National Union* and *Acosta v. National Union*. These are clearly cases brought against companies that fall outside the insuring agreements and terms of a policy.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Doug Noah with the Wilson Elser firm located in Dallas, Texas. Doug understands the many competing issues facing insurance companies: how best to be a strong advocate while at the same time realizing that on many occasions, the adversary is still a customer of your client. Doug is able to explain the issues in a manner which is understandable and

persuasive, while at the same time, not being confrontational.

Q: What is a mistake you made early in your career and what did you learn from it?

A: My reluctance to tell clients exactly how I felt about their case is both good and bad. I have learned that clients want their counsel to advise them both of the strength and weakness of their position so that they are able to make an informed business decision. One must be willing to get outside of their comfort zone. Clients pay us to advise them what we really believe — not what we think they may want to hear.

Sometimes, bad news becomes good news when you are able to resolve a matter without the client being exposed to a significant risk. At the same time, you to have the confidence to tell them when they are strong.

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